IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2825 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAJENDRAKUMAR N PRAJAPATI - Appellant(s)
Versus
BUDHIYABHAI R PATEL & 1 - Defendant(s)

==========

Appearance :

MR MAUHSIN HAKIM for MR MTM HAKIM for Appellant(s) : 1,
None for Defendant(s) : 1,
MR ADIL MIRZA for MR RR MARSHALL for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/02/2007

ORAL JUDGMENT

1. The original claimant has approached this Court by filing this appeal under Section 173 of the Motor Vehicles Act [hereinafter referred to as the “Act”], for

seeking enhancement of the compensation awarded by MACT [Auxi.] Surat by judgment and award dated 4th April, 1996 made in MACP No. 879 of 1987. The appellant has been awarded a sum of Rs.40,000=00 together with interest at the rate of 15% per annum from the date of the application till realization and proportionate costs against his claim of Rs. 1 lakh. The present appeal is for Rs.60,000=00.

2. The accident in question took place on 2nd June, 1987. The appellant was a pillion rider on the motorcycle driven by his father. It was bearing registration no. GRE 8549. They were going from Surat to Kansad to attend to their business of manufacturing bricks kiln. According to the appellant, they were proceeding on the correct side at moderate speed. However, the owner of the motorcycle bearing registration no. GRD 1466 tried to overtake the Motorcycle of the appellant near Sachin cross roads and it dashed against the motorcycle of the appellant. The appellant fell down and received serious injuries. He was immediately taken to the Civil Hospital, Surat and from there he was transferred to Mahvir Hospital at Surat in unconscious condition. He had sustained fracture of the skull bone. He had to remain in hospital for one month. He remained unconscious for about 20 days. Even after

discharge from the hospital, he had not recovered completely and also developed certain permanent defects such as slurring in speech. According to him, he was unable to remember the things. His father, therefore, filed the present petition for claiming compensation of Rs.1 lakh.

3. The claim was resisted by respondent no. 2 by filing written statement at Exh. 21. It was denied that the offending vehicle was driven in rash and negligent manner. It was also denied that the appellant earned Rs.1,000=00 per month. According to respondent no. 2, the accident occurred solely due to appellant's own negligence and, therefore, it was required to satisfy the award.

4. On the basis of the material produced before it, the Tribunal awarded Rs.40,000=00 as stated above together with interest and costs. The appellant is dissatisfied with the quantum of compensation. Hence, he has approached this Court.

5. Mr. Mahusin Hakim learned advocate for the appellant has submitted that the compensation determined by the Tribunal is not just and proper. According to him

considering the nature of injuries suffered by the appellant, under the head of pain, shock and suffering, the Tribunal ought to have awarded at least Rs.30,000=00. He has further submitted that even, under the head of prospective economic loss and actual economic loss, the Tribunal has assessed the compensation on lower side and it is required to be enhanced. As against that Mr. Adil Mirza learned advocate for Mr. R.R. Marshall appearing for the respondent has however, vehemently resisted the appeal and has submitted that there is no need to interfere with the judgment and award made by the Tribunal since the award is just and proper. He has by and large supported the judgment of the Tribunal and has prayed for dismissal of the appeal.

6. Having given careful consideration to the submissions of the learned advocates and the record and proceedings of the case, it appears that there is no dispute that the appellant received serious injuries in a vehicular accident when he was travelling along with his father on their motorcycle. It is also not in dispute that there was collision between the two vehicles i.e., motorcycle bearing registration no. GRE 8549 and motorbike bearing registration no. GRE 1466. So far as the issue of negligence is concerned, the Tribunal has

held the driver of the motorcycle bearing registration no. GRE 1466 responsible for causing the accident. Against that finding no appeal is filed by the other side nor any cross objections have been filed. In view of the same, the said finding has become final. I have also perused the discussion made by the Tribunal in its judgment on the issue of negligence and I am in total agreement with it. I therefore, do not find any reason to disturb that finding.

7. So far as the quantum of compensation is concerned, Mr. Hakim's submissions are required to be accepted on two counts, The medical evidence shows that the injuries suffered by the appellant were quite serious. He had remained unconscious almost for 20 days in the hospital. Gradually he recovered senses and after about a month of his admission he was discharged from the hospital. Even thereafter he had to take follow up treatment for considerably long period. Hence taking in to consideration these factors a sum of Rs.10,000=00 awarded by way of compensation is slightly on lower side and it is required to be enhanced by additional sum of Rs.5,000=00. Thus appellant is entitled to receive compensation of Rs.15,000=00 under the head of pain, shock and suffering. Secondly, so far as the future loss

of income is concerned, the Tribunal has held that considering the nature of the defect developed by the appellant on account of the injuries namely slurring of speech there would be loss of Rs.100=00 per month. The Tribunal has held the income to be Rs.750=00 per month and it has also held that at that point of time, the appellant was getting Rs.500=00. The Tribunal also considered the fact that the appellant was losing Rs.250=00 per month because of the defect in speech. However, the Tribunal has assessed the loss at Rs.100=00 per month only, on the basis of the certificate of the Doctor, who has calculated the loss at the rate of Rs.100=00 per month, i.e., Rs.1,200=00 per year. The Tribunal has applied the multiplier of 15 and has held that the appellant would be entitled to receive Rs.18,000=00 by way of loss of prospective income. However, this does not seem to be proper logic. Though no permanent disability has been assessed by the medical officer who has treated the respondent it is obvious that had the appellant been in normal condition his income could have increased, but these chances are marred because of the injuries suffered by him. Hence, monthly loss can be easily assessed at Rs. 250=00. If it is multiplied by 12 then it will be Rs. 3,000=00. The appellant was aged 20 years at the time when the accident

took place. The Tribunal has applied the multiplier of 15. However, it appears that the multiplier is on lower side and it is required to be increased to 18. Hence, the appellant would be entitled to receive Rs.36,000=00 under the head of prospective loss of income.

8. In view of the above, the appellant will be entitled to receive additional sum of Rs.41,000=00 and in all Rs.81,000=00 by way of compensation in place of Rs.40,000=00. The insurance company is therefore, directed to deposit the additional sum of Rs.41,000=00 together with interest and costs as decided by the Tribunal within three months from the date of this judgment. Upon deposit, the Tribunal may pass appropriate order and hand over the amount by A/c. Payee cheque to the appellant after due verification.

9. In the result, the appeal is partly allowed with costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

/phalguni/